

Where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. MPEP § 803.01. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. To establish that a search would be present an undue burden, the Examiner must show that the restricted groups have a separate classification, have acquired a separate status in the art, or that searching would require different fields of search. MPEP § 808.02. Applicants respectfully submit that all the groups identified in the Office Action can be searched without undue burden.

#### **PRELIMINARY AMENDMENT**

Please amend the claims by substituting the following claims for the corresponding previously pending claims of the same numbers:

95. (Amended) The bio-detector of claim 94 [83], wherein the R gene comprises a shuffled R gene with a specified characteristic.
98. (Amended) The bio-detector of claim 94 [83], wherein the reporter comprises a green fluorescent protein (GFP), a carotenoid biosynthetic enzyme, an anthocyanin regulatory gene or a luciferase.
99. (Amended) The bio-detector of claim 94 [83], wherein the promoter comprises a promoter derived from a gene in a systemic acquired resistance (SAR) pathway.
100. (Amended) The bio-detector of claim 94 [83], wherein the promoter comprises a PR promoter.
101. (Amended) A plant or plant cell comprising the bio-detector of claim 94 [83].

Please add the following new claims:

- A3
128. (New) The bio-detector of claim 94, wherein the elicitor is an environmentally relevant ligand.
  129. (New) The bio-detector of claim 128, wherein the environmentally relevant ligand is a component of a crop pathogen.
  130. (New) The bio-detector of claim 128, wherein the environmentally relevant ligand is a crop pathogen derived product that has not been ascribed elicitor function.

A3  
CONT

131. (New) The bio-detector of claim 128, wherein the environmentally relevant ligand is a molecule produced by a plant in response to environmental stressors such as heat, drought, uv irradiation, and wounding.

132. (New) The bio-detector of claim 128, wherein the environmentally relevant ligand is a human and/or animal pathogen.

These amendments introduce no new matter and are fully supported by the application as filed. Particularly recite some specific embodiments of the claimed invention. Support for new claims 128-132 can be found at page 36 of the specification, lines 12-19. In accordance with the requirements of 37 C.F.R. § 1.121, a marked up version showing the changes to the claims, is attached herewith as Appendix A.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (650) 298-5884. The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-0990.

Respectfully submitted,



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APPENDIX A"MARKED UP" CLAIMS ILLUSTRATING THE AMENDMENTS MADE TO THE  
CLAIMS OF 09/849,452 WITH ENTRY OF THIS AMENDMENT

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| A1 | 95. (Amended) The bio-detector of claim 94, wherein the R gene comprises a shuffled R gene with a specified characteristic.   |
| 98 | 98. (Amended) The bio-detector of claim 94, wherein the reporter comprises a green fluorescent protein (GFP), a carotenoid biosynthetic enzyme, an anthocyanin regulatory gene or a luciferase. |
| A2 | 99. (Amended) The bio-detector of claim 94, wherein the promoter comprises a promoter derived from a gene in a systemic acquired resistance (SAR) pathway.                                      |
|    | 100. (Amended) The bio-detector of claim 94, wherein the promoter comprises a PR promoter.  |
|    | 101. (Amended) A plant or plant cell comprising the bio-detector of claim 94.   |